

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

## BILLY JOE STREIGHT

Claimant

VS.

**BOEING COMPANY**

Respondent

AND

## INSURANCE COMPANY

STATE OF PENNSYLVANIA

Insurance Carrier

## ORDER

Claimant requested Appeals Board review of Administrative Law Judge Jon L. Frobish's June 18, 1999, Award. The Appeals Board heard oral argument on October 27, 1999.

## APPEARANCES

The claimant appeared by his attorney, Kelly W. Johnston of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Eric K. Kuhn of Wichita, Kansas.

**RECORD**

The Appeals Board has considered the record listed in the Award. Additionally, at oral argument, the parties agreed that the January 12, 1998, letter report of Hewitt C. Goodpasture, M.D., should also be made a part of the evidentiary record.

## STIPULATIONS

The Appeals Board has adopted the stipulations listed in the Award.

### ISSUES

This is a claim for either a work-related accidental injury or an occupational disease that allegedly caused claimant to suffer a dermatitis condition. The Administrative Law Judge found claimant had failed to prove his dermatitis condition had a causal relationship to his work environment. The Administrative Law Judge denied claimant's request for workers compensation benefits.

On appeal, claimant contends he established through the medical testimony and his testimony that his chronic dermatitis condition was the result of long-term exposure to large quantities of pigeon droppings at his work place. As a result of this exposure, claimant argues he has a 10 percent permanent impairment of function of the body as a whole as determined by the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.

On the other hand, respondent contends the Appeals Board should affirm the Administrative Law Judge's Award. Respondent argues that claimant failed to prove either through his testimony or through the medical testimony that his dermatitis condition was caused by the pigeon droppings found in claimant's work place.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board makes the following findings and conclusions:

The Administrative Law Judge's Award, that found claimant failed to prove his dermatitis condition was related to his work environment, should be affirmed.

The claimant has the burden to prove by a preponderance of the credible evidence his right to an award of compensation and further to prove the various conditions on which that right depends.<sup>1</sup>

The Appeals Board finds that the evidence in this case supports an occupational disease claim and not a claim for an accidental injury that arose out of and in the course of employment. Accordingly, claimant has the burden to prove that his exposure to

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<sup>1</sup>See K.S.A. 1997 Supp. 44-501(a) and K.S.A. 1997 Supp. 44-508(g).

pigeon droppings in the work place had a causal relationship to his upper extremity dermatitis condition.<sup>2</sup>

Claimant argues he developed an upper extremity dermatitis condition from working in an environment contaminated with large quantities of pigeon droppings. Claimant's testimony along with pictures of the work place and various documents from respondent were admitted into evidence that proved claimant's working environment contained large quantities of pigeon droppings.

Claimant started working in 1992 in respondent's surplus store located in what is characterized in the record as the old Georgia Pacific building. One of claimant's jobs was to clean up the pigeon excrement that accumulated on a daily basis on both the equipment and the floor. Claimant testified he developed open sores on his upper extremities after he started working in that contaminated environment.

But claimant did not seek medical treatment for the open sores until October 1, 1996, when he went to see his family physician, Antonio L. Osio, M.D. Dr. Osio eventually diagnosed claimant with a psittacosis infection which can be caused by pigeons. Dr. Osio prescribed Atarax and Tetracycline medication along with an ointment to put directly on the open sores.

Claimant first reported his dermatitis condition to the respondent on October 22, 1996. At that time, respondent's medical facility filled out an Employee Injury & Illness Report. Contained in the report is a diagnosis made by one of respondent's physicians of topical dermatitis of the upper extremities.

After numerous complaints, respondent finally contracted with an independent contractor to clean up and remove the pigeon droppings at claimant's work place. The record fails to indicate the specific date that the cleanup was accomplished. But a copy of the Service Construction Contract was admitted into the record and shows a proposed completion date of December 1, 1997.

At the March 27, 1999, regular hearing, claimant testified he was working at his regular job in the same area and had not had any open sores for several months. Since the clean up, claimant testified his dermatitis condition had gradually improved and resolved.

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<sup>2</sup>See K.S.A. 44-5a01.

At respondent's request, claimant was examined by dermatologist specialist Christopher A. Moeller, M.D., of Wichita, Kansas. Dr. Moeller saw claimant once on January 27, 1998. At that time, Dr. Moeller had been supplied with the medical records of Dr. Osio; respondent's October 22, 1996, Employee Injury & Illness Report; and a letter report dated January 12, 1998, from Dr. Hewitt Goodpasture. Claimant provided the doctor with a history of intense itching of the upper extremities starting in 1992. Over the past five years, the only medication claimant had found that helped the itching was Atarax. But the itching had stopped in about five days after respondent had cleaned up the pigeon dropping that had accumulated in the work place.

Dr. Moller's physical examination found angulated hypopigmented scars on the dorsal aspect of claimant's hands and forearms. There were roughly six erythematous excoriated somewhat hypertrophic plaques scattered on the dorsal aspect of claimant's hands and arms. Also found was one freshly excoriated nodule on claimant's presternal chest. The doctor's diagnosis was prurigo nodularis with a component of neurotic excoriations. Dr. Moeller explained this diagnosis to mean a person who, for whatever reasons, tends to pick and scratch at their skin incessantly. This leads to open sores and scars. The condition is more related to anxiety of a self-induced nature.

Dr. Moeller concluded that claimant's dermatitis condition was not related to his exposure to pigeon droppings at work. In regard to Dr. Osio's diagnosis of psittacosis, Dr. Moeller opined that there is no skin problems typically associated with psittacosis pulmonary infection. Furthermore, the doctor testified the biopsy that was completed at the direction of Dr Osio in 1996 ruled out infectious etiology. After extensive cross examination by claimant's attorney, Dr. Moeller again expressed his opinion unequivocally that claimant's dermatitis condition was typical of a self-induced dermatitis due to anxiety or excessive compulsive tendencies. Claimant's condition is commonly seen in dermatology, and the results of the previous biopsies completed are compatible with this diagnosis.

Claimant was examined and evaluated by another dermatologist specialist, Marlene Mendiones, M.D., at claimant's attorney's request. She saw claimant on June 26, 1998. Dr. Mendiones found claimant to have multiple scarring on both forearms and upper arms. Although the doctor saw claimant some seven months after the pigeon droppings were removed from the work place, claimant still had four old crusted lesions on his forearms and one new lesion on his right upper extremity. Claimant was diagnosed with irritant dermatitis "possibly" related to the bird droppings. Dr. Mendiones testified she thought that in claimant's case she may not be able to determine exactly the cause of the dermatitis condition.

Claimant argues that when Dr. Mendiones' testimony is considered as a whole it should be construed that she expressed her opinion as more probably or more likely true than not that the pigeon droppings were the cause of claimant's dermatitis condition. The Appeals Board disagrees. The Appeals Board finds that Dr. Mendiones' overall testimony was equivocal and only expressed the opinion that one of the possible causes of claimant's dermatitis condition was the pigeon droppings but there could have been many other causes.

The last physician to examine and evaluate claimant was Daniel D. Zimmerman, M.D., of Westwood, Kansas. Dr. Zimmerman was employed by claimant's attorney to examine and evaluate claimant's dermatitis condition on the issue of both causation and permanent functional impairment rating. The doctor saw claimant on one occasion on December 3, 1998. Dr. Zimmerman is an internal medicine physician who has an extensive practice in evaluating and rating patients for disability under both state and federal law.

Before the examination, Dr. Zimmerman had the opportunity to review claimant's medical treatment records and Dr. Goodpasture's January 12, 1998, medical letter report. The doctor's physical examination found claimant to have extensive scarring from the mid arm down his forearms and over the dorsal surface of his hands. Although one year after the pigeon droppings were removed, the doctor found two healing lesions on claimant's left arm. The claimant gave Dr. Zimmerman a history that he had to continue to use emollient cream on his arms at work. Dr. Zimmerman diagnosed claimant with contact dermatitis directly related to his work environment that had been contaminated with pigeons and pigeon droppings.

On cross examination, Dr. Zimmerman testified that he was familiar with dermatitis conditions because he had treated dermatitis over the 25 years he had been in medical practice. But he also testified that he would not represent himself as a specialist in dermatology.

After an examination of all the medical evidence in this case, the Appeals Board concludes that the most persuasive and credible medical opinions expressed in the record are those of dermatology specialist Christopher A. Moeller, M.D. He was unequivocal and confident when he testified that claimant's dermatitis condition had no causal relationship to claimant's contaminated work place. Based on his extensive experience in dermatology, Dr. Moeller diagnosed claimant's dermatitis condition as prurigo nodularis with a component of neurotic excoriations. This diagnosis is a presentation more typical of a self-induced dermatitis secondary to anxiety or obsessive compulsive tendencies. In contrast, Dr. Mendiones would not rule out pigeon droppings

as a cause. But she also would only express her opinion as possible because there could be other causes. Furthermore, Dr. Zimmerman fully admitted he was not a specialist in dermatology. The Appeals Board finds Dr. Zimmerman was employed by the claimant more for the purpose of expressing an opinion based on the AMA Guides as to permanent functional impairment rather than causation.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Jon L. Frobish's June 18, 1999, Award should be, and is hereby, affirmed in all respects and the claimant, Billy Joe Streight, is denied an award of compensation against the respondent, Boeing Company, and its insurance carrier, Insurance Company State of Pennsylvania.

The Appeals Board also approves and adopts all other orders contained in the Award.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS  
Eric K. Kuhn, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director